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No. 51

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OCT 13 1966
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1966

THE FIRST NATIONAL BANK OF LOGAN, Logan, Utah, a National Banking Association,

Petitioner

vs.

WALKER BANK & TRUST CO., a Corporation

Respondent

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

RESPONDENT'S ARGUMENT MAKES OTHER CONGRESSIONAL ENACTMENTS REDUNDANT

A. Congress Would Not Have Enacted 28 U. S. C. Sec. 1348 if 28 U. S. C. Sec. 1337 Gives The District Courts Jurisdiction Of Any Action Under The National Bank Act.

Even though not pleaded in its complaint as required by Rule 8 (a), Rules of Civil Procedure, Title 28, United States Code, Walker Bank apparently now relies on 28 U. S. C. Sec. 1337 in support of The District Court's jurisdiction. If 28 U. S. C. Sec. 1337 gives The District Courts of the United States jurisdiction of any action by any person to challenge the validity of actions of the Comptroller of the Currency relating to National Banks or to challenge any action by a National Bank because The National Bank Act is an Act of Congress "regulating Commerce or protecting trade and Commerce against restraints and monopolies" then there was no reason for Congress to specifically limit the jurisdiction of District Courts to suits against National Banks under the National Bank Act (Title 12, Chapter 2, United States Code) by the United States or any officers thereof, or to suits by National Banks against the Comptroller of the Currency under the National Bank Act, and to provide in all other actions (actions other than suits involving the National Bank Act) that National Banks have no greater rights in Federal Courts than other citizens of the state in which they are located (28 U. S. C. Sec. 1348). In other words the National Bank Act by itself gives District Courts no greater jurisdiction in suits against National Banks than they would have if there was no National Bank Act. Continental Nat'l. Bank of Memphis v. Buford, 191 U. S. 119, 24 S. Ct. 54, 48 L. ed. 119; Ex parte Jones, 164 U. S. 691, 17 Sup. Ct. 222, 41 ed. 601; Austin v. Altman, C. A.

N. Y. 1964, 332 F. 2d 273; American Surety Co. of New York v. Bank of California, D. C. Ore. 1941, 44 F. Supp. 81, affirmed 133 F. 2d 160.

The intent of Congress to protect National Banks from suit by every person seeking to challenge the authority of its Board of Directors is also expressed in 12 U. S. C. Sec. 93 where Congress prescribes a specific procedure for challenging the legality of actions of National Banks in order that the ability of the National Government to regulate currency will not be impaired through suits by others seeking to challenge the authority of a National Bank to conduct its business. (Here the First National Bank of Logan, had been in business at its drive-in branch for six months before its authority was challenged by Walker Bank.)

See also Mercantile National Bank v. Langdeau, 371 U. S. 555, 83 S. Ct. 520, 9 L ed. 2d 523, for a review of the legislative history of 28 U. S. C. Sec. 1348.

The National Bank Act does not say it is an act to regulate commerce, but it is "an Act to promote a national currency secured by a pledge of United States Bonds, and to provide for the circulation and redemption thereof" (12 U. S. C. Sec. 38), which seems to imply it was authorized under the power to "coin money" or to "borrow money on the credit of the United States." See Hudspeth v. Melville, C. C. A. Kan. 1942, 127 F. 2d 373.

An interpretation of 28 U. S. C. Sec. 1337 as giving District Courts jurisdiction in all suits against National Banks under United States Code, Title 12, Chapter 2, requires a reading which makes a Congressional Act redundant.

B. The Requirements of Subdivision (1) Are Not The Same As The Requirements of Subdivision (2) of 12 U. S. C. Sec. 36 (c).

It is conceded that Walker Bank, a state bank, has power to establish a "new branch" in Logan, Utah, by taking over The First National Bank of Logan as a branch. Respondent's attempt to find some distinction between branches acquired by merger with existing unit banks and establishment of new banking office buildings loses any significance when one reads the Branch Banking Act of 1927 as amended by the act of 1933 and finds that subsection (b) as now written was not added until 1962. (Pub. L. 87-721, 76 Stat. 667). Neither R. S. Sec. 5155. Feb. 25, 1927, c. 191, Sec. 7, 44 Stat. 1228, nor 48 Stat. 189, 190 contains any distinction between new branches acquired by merger with another unit bank or by erecting a new branch bank office building. Regardless of how it is established, if a bank has a branch where none existed before it is a "new branch."

Since state banks are at the present time expressly authorized to establish a "new branch" in Logan, Utah

(See second paragraph of Section 7-3-6, Utah Code Annotated, 1953) 12 U. S. C. Sec. 36 (c) (1) clearly gives such authority to a National Bank located in that city.

Walker bank claims this interpretation gives First Security Bank of Ogden, Utah (a National Bank) the power to establish another branch in Logan, Utah, without taking over The First National Bank of Logan. It is respectfully submitted that this issue is not before the Court.[1] (Walker Bank concedes we are discussing 12 U. S. C. 36 (c) (1) in its brief at page 2.) But if the Court affirms the Tenth Circuit Court of Appeals, the effect of the decision will also limit the provisions of subdivision (2) of 12 U. S. C. sec. 36 (c) and no National bank will be able to branch until it has complied with all of the requirements of state law.

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[1]If states desire to prevent banks from branching in other communities where there is a bank or branch already located, they need only to provide that outside banks cannot branch in such cities as has been done in Michigan (See National Bank of Detroit v. Wayne Oakland Bank, 252 F. 2d 537, 6th Cir. 1948, cert, den. 358 U. S. 830). Such a law does not discriminate against National Banks. But if all requirements of state law are incorporated into the National Branch Banking law, a state can make it impossible for a National Bank to branch in its own city even though all state banks can branch in that city as is the present situation in Logan City under the decision of the Court of Appeals (Tenth Circuit).

There is no specific restriction of state law incorporated into subdivision (1).[2] In subdivision (2) at least two requirements of state law are incorporated. A restriction as to location and a restriction as to capital requirements. But if there is no authorization for branching in state law until the National Bank meets all of the procedural requirements of state law there is no reason for the restrictions as to "location" and "capital" in subdivision (2) and again the contention of Walker Bank requires a reading which makes a Congressional Act redundant.

C. The National Bank Act Expressly Provides For Different Capital Requirements Than State Banks In Establishing Inside Branches.

Most of the Argument of Walker Bank is based on the premise that Congress intended that both National

[2]Walker Bank claims that the words "such establishment" imposes an identical location restriction, but Congress did not so state and it is evident from reading the statute that the words "such establishment" refers only to establishment within the city where the bank is located as distinguished from "any point within the state." And if a state bank may branch in a city, such establishment is also permitted to National Banks under the requirements of Federal law as to Comptroller's approval and minimum capital requirements. But there is nothing in Subdivision (1) or any other Federal law that requires the National Bank to comply with all restrictions and procedural requirements of state law in seeking to branch within the limits of its own community.

and State Banks are subject to the identical requirements of state law under a theory of competive equality. But Congress expressly provides its own restrictions as to capital requirements without regard to state requirements which indicates that Congress did not intend identical requirments in establishing inside branches [see 12 U. S. C. Section 36 (d)]. The minimum capital requirements required by this subsection for two national banks in Logan under 12 U. S. C. Sec. 51 is $240,000 ($100,000 for each bank or branch plus twenty per cent paid in surplus). But Utah State law requires a paid in capital of only $60,000 in order for a state bank to establish a branch.

There is no provision in the Federal Statutes that a National Bank can branch within the city where it is located if it meets the minimum capital requirements of state law.

An interpretation of 12 U. S. C. Section 36 (c) (1) which holds that the national and state branch banking requirements are identical requires a reading which makes another Congressional Act redundant[3]

D. Requiring Petitioner To Merge Before It Can Branch Reduces Competition.

[3]In relying solely on legislative language dealing with subdivision (2) which was enacted in 1933, Walker Bank also ignores the intent of Congress in 1927 to allow National banks to have branches within the limits of the city where they are located if states banks can branch there, which intent was preserved by the Conference Committee action

The Comptroller's argument that the Utah merger provision is incompatible with the well-defined Federal policy favoring competition in banking is illustrated here. Petitioner First National Bank is proud that as a tiny unit bank it has been able to meet the credit requirements of local small businessmen in spite of competition from branches of the two largest banks in the State of Utah.

But now Petitioner is faced with a crisis. Each of the branches of the two giant banks have been able to establish drive-in offices to receive deposits and pay checks under conditions not available to Petitioner. Accordingly in 1962 at a time when the Utah State Bank Commissioner said that Utah State law permitted a state bank to branch in its own town if there was no other bank it could take over, Petitioner obtained approval from the Comptroller of the Currency to establish a drive-in branch a couple of blocks from its main office to receive deposits and pay checks. This was necessary in order that The First National Bank's efficiency in receiving deposits from its customers would not be impaired as its customers demanded the same convenience offered by the branches of Walker Bank and First Security Bank in Logan.

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in amending the Bratton Amendment by adding subdivision (1) thereto and thus preserving the McFadden Act. In 1927 Congress also showed it had no intention of incorporating the identical requirements of state law by imposing population limitations as well as capital limitations on branch banking. (See 44 Stat. 1228.)

If the decision of the Tenth Circuit Court of Appeals is sustained there appears to be no alternative but to merge and leave the small businessmen of Logan to the excessive power of giant financial institutions. Congress has expressly stated that it favors competition in the banking industry. (See Pub.L. 89-356, Feb. 21, 1966, Sec. 1, adding 12 U. S. C. 1828 (c) (5), (7). But to hold that 12 U. S. C. Sec. 36 (c) (1) incorporates the anti-competitive merger requirements of Utah State law requires a reading which makes the Acts of Congress favoring competition redundant so far as The First National Bank is concerned.

CONCLUSION

Petitioner's position is supported by the plain language of the statutes and does not conflict with language used by Congress in other laws. Respondent Walker Bank asks the Court to ignore the express provisions of at least four other separate Congressional Acts. In order that other Acts of Congress will not be made redundant the decision of the Tenth Circuit Court of Appeals should be reversed.

Respectfully submitted,

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